

# ARKANSAS SUPREME COURT

Nos. CR 06-1435

NOT DESIGNATED FOR PUBLICATION

JAMES E. McDONALD  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered January 25, 2007

*PRO SE* MOTION FOR BELATED  
APPEAL OF ORDER [CIRCUIT  
COURT OF MILLER COUNTY, CR  
2004-103, HON. KIRK JOHNSON,  
JUDGE]

MOTION DENIED.

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## PER CURIAM

In 2004, petitioner James E. McDonald was found guilty by a jury of aggravated robbery, battery in the first degree, and battery in the second degree. An aggregate sentence of 1,080 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *McDonald v. State*, CACR 04-1130 (Ark. App. June 1, 2005). The appellate court mandate was issued on June 21, 2005.

On July 17, 2006, petitioner filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. Code Ann. §16-90-111 (Repl. 2006). The trial court denied the petition on July 31, 2006. No appeal was taken, and petitioner now seeks leave to proceed with a belated appeal from the order pursuant to Ark. R. App. P.—Crim. 2(e).

We need not consider petitioner's reasons for failing to perfect an appeal because it is clear from the record that the petition in the trial court was not timely filed. This court has consistently held that an appeal of a postconviction order will not be permitted to go forward where it is clear that the petitioner could not prevail. *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per*

*curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*); *Chambers v. State*, 304 Ark. 663, 803 S.W.2d 932 (1991) (*per curiam*); *Johnson v. State*, 303 Ark. 560, 798 S.W.2d 108 (1990) (*per curiam*); *Williams v. State*, 293 Ark. 73, 732 S.W.2d 456 (1987) (*per curiam*).

In the petition filed in the trial court, petitioner contended that the sentence imposed on him was illegal, which is a claim within the purview of Criminal Procedure Rule 37.1. Such claims must be raised in a petition under Rule 37.1 filed in the trial court within sixty days of the date the appellate court mandate was issued. Ark. R. Crim. P. 37.2; *see Reed v. State, supra* (holding that Ark. R. Crim. P. 37.1 superseded the time limits imposed in Ark. Code Ann. § 16-90-111 for correction or reduction of a sentence).

The time limits set out in Rule 37.2 are jurisdictional in nature, and the circuit court may not grant relief on a untimely petition for postconviction relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). As petitioner did not file his petition under the rule until approximately thirteen months after the appellate court mandate in his case was issued, the court did not err when it declined to grant the relief sought.

Motion denied.